

Supreme Court of the United States

OCTOBER TERM, 1976.

No. 76-1149

JOHN D. CAREY, ET AL.,

Petitioners,

vs.

JARIUS PIPHUS, A MINOR AND GENEVA PIPHUS, GUARDIAN
AD LITEM FOR JARIUS PIPHUS,

Respondents.

JOHN D. CAREY, ET AL.,

Petitioners,

PEOPLE UNITED TO SAVE HUMANITY, SILAS BRISCO,
A MINOR AND CATHERINE BRISCO, GUARDIAN AD LITEM
FOR SILAS BRISCO,

Respondents.

ON A WRIT OF CERTIORARI TO THE UNITED STATES COURT
OF APPEALS FOR THE SEVENTH CIRCUIT.

BRIEF FOR THE PETITIONER.

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OPINIONS BELOW.

The opinion of the Court of Appeals reversing the decision of the District Court is reported at 545 F. 2d 30. It is reproduced in Appendix A to the Petition for Certiorari at p. A1.

The memorandum opinion of the District Court was not reported. It is reproduced in Appendix A to the Petition for Certiorari at p. A5.

JURISDICTION.

The decision of the Court of Appeals was entered on November 22, 1976. The petition for a Writ of Certiorari was filed on February 19, 1977. Certiorari was granted April 18, 1977. Jurisdiction is conferred on this court under the provisions of 28 U. S. C. § 1254(1).

QUESTIONS PRESENTED.

1. Whether the decision of the Court of Appeals, holding that plaintiffs who prevail on a claim of violation of civil rights are entitled as a matter of law to general compensatory damages absent a showing of injury or pecuniary loss, substantially conflicts with the holdings of other Circuit Courts of Appeals which permit a denial of such damages or allow an award of only nominal damages?
2. Whether the Court of Appeals erred in substituting its own judgment for that of the District Court, sitting as the trier of fact, when it determined that the plaintiffs were not entitled to compensatory damages because they, respectively, failed to establish any injury and failed to quantify their damages?

STATEMENT OF THE CASE.

These are consolidated cases wherein the minor plaintiffs, Silas Brisco and Jarius Piphus, seek relief upon a claim that their respective suspensions from school violated their constitutional due process rights.

A. Silas Brisco.

Silas Brisco attended the fifth grade at the Barton Elementary School in 1972-1973 school year. During this period of time, the school was in a transition from a predominantly white to predominantly black enrollment. Barton School officials were aware of physical violence connected with gang rivalries and recruitments in the school and that, in addition, a single earring was a symbol of certain gang membership. During the 1972-1973 school year at Barton, black male students began to attend the school wearing these earrings. School officials determined that in the interest of student safety, male students would be prohibited from wearing these earrings.

Following the establishment of the earring prohibition rule, various male students were orally informed of the rule and were warned that continued wearing of the earring could result in suspension. Silas Brisco had actual notice of the earring ban. In May of 1973, school officials noticed the appearance of certain earrings denoting gang membership in a branch of the Disciples street gang, the "Boss Pimps Disciples." The particular earring which Brisco wore was recognized by school officials as denoting officership in that gang.

In May of 1973, Silas Brisco was told to remove the earring or face suspension. He refused to do so and was suspended for a portion of the school day. Thereafter, his mother met with the District Superintendent and Brisco agreed to remove the earring and was readmitted.

After school reconvened for the Fall semester, 1973, Brisco again wore the earring to school on September 11, 1973 and during the course of the school day was brought to the principal's office where the principal and assistant principal directed him to remove the earring. Brisco refused. The principal then conferred with the District Superintendent and informed Brisco that he must comply with the rule or face suspension.

When Brisco refused to remove the earring, the assistant principal left the office area, telephoned Brisco's mother and wrote up a suspension report form. When Mrs. Brisco came to the school and conferred with the school officials, she was informed that her son would be suspended if he continued to refuse to comply with the earring rule. Mrs. Brisco supported her son, and the twenty-day suspension was then imposed. After having served 17 days of the suspension, Brisco was voluntarily readmitted during the pendency of a Motion for Preliminary Injunction in this action.

B. Jarius Piphus.

Jarius Piphus was a student at Chicago Vocational High School (CVS) during the 1973-1974 school year. The written rules of CVS prohibited cigarette smoking and bringing intoxicating substances on to school property. Jarius Piphus had actual notice of these rules.

On January 23, 1974, the school principal observed Piphus and another student passing an irregularly shaped cigarette between them. As the principal neared the boys, he smelled smoke which he believed to be the odor of marijuana. The principal also observed Piphus attempting to pass cigarette papers to the other students. When the boys saw Mr. Brown, they discarded the cigarette and no attempt was made to recover the cigarette. Piphus admitted smoking the cigarette but denied that the substance he was smoking was marijuana.

The principal accompanied the two students to the school's disciplinary office and there instructed the assistant principal to impose the "usual procedure" of a twenty-day suspension. Although the principal admits that it was his decision to suspend Piphus, the formal suspension was effected by the assistant principal. At the time of the suspension, the assistant principal informed Piphus that he was being given a twenty-day suspension for smoking cigarettes. Piphus later learned that the reason also including class cutting.

Subsequently, two meetings were held among the school officials, Mr. Piphus, members of his family, and legal aid representatives. The meetings were not hearings but rather were for the purpose of explaining the previous actions taken. At the second meeting, the legal aid representatives were excluded when they attempted to tape record the session. Upon administrative review by the District Superintendent, Piphus' suspension was reduced to five days. Concurrently, Judge Bauer entered a temporary restraining order requiring the readmission of Piphus. He missed eight days of classes.

C. Findings.

The District Court found that the suspensions in question raised two legal issues: whether the students were given sufficient prior notice of conduct which was prohibited, and whether adequate hearings were held at the time each boy was suspended.

The Court went on to find that both Brisco and Piphus had actual notice of reasonably narrow regulations of prohibited conduct. Because both suspensions potentially exceeded ten days, both boys were found entitled to receive a formal evidentiary hearing, which should include:

1. Pre-hearing notice, including a short summary of the evidence upon which the administrator intends to rely.
2. To be represented at the hearing either by counsel or other responsible advocate.

3. To present witnesses on his own behalf and cross-examine witnesses.
4. At his own expense, to make a tape recording or transcript of the hearing.
5. An impartial hearing officer to preside.

Accordingly, both Brisco and Piphus failed to receive adequate disciplinary hearings; the decisions to suspend both of them were made by their major factual accusers; neither had an opportunity to present meaningful evidence; conferences were held following the decision to suspend them; and in the case of Jarius Piphus, his attorneys were excluded from a post-suspension conference and not allowed to make a tape recording of the conference.

Each plaintiff is entitled to a declaration that his suspension in question was unconstitutional.

Each plaintiffs' school records should be corrected to expunge any reference to these suspensions.

None of the defendants acted maliciously in enforcing the disciplinary school policies against the plaintiffs, and the defendants undoubtedly believed they were protecting the integrity of the educational process.

The defendants were nonetheless not immune from monetary liability because under the "*Linwood Rationale*"¹ defendants should have known that the plaintiffs were entitled to some type of an adjudicative hearing.

An award of damages must be based upon some proof to a reasonable degree of certainty. Plaintiffs put no evidence into the record to quantify their damages. In addition, plaintiffs put no evidence into the record which could form a basis of even a speculative inference measuring the extent of their respective injuries. Damages, accordingly, denied due to a complete lack of proof thereof. (Pet. for Writ A5)

* * * * *

1. *Linwood v. City of Peoria*, 463 F. 2d 763 (7th Cir. 1972).

On plaintiffs' post-trial motions, Judge McLaren reopened the issue of damages and the plaintiffs submitted arguments and exhibits in support of an award. Following the death of Judge McLaren, the case was assigned to Judge George N. Leighton; and on April 6, 1976, he denied the plaintiffs' motions, citing the same reasons cited by Judge McLaren. (App. p. 28)

Plaintiffs appealed the trial court's failure to award general compensatory damages and the trial court's failure to clearly grant the requested declaratory and injunctive relief.

The Seventh Circuit Court of Appeals held for plaintiffs-appellants on all issues. The Court held that plaintiffs whose civil rights have been violated are entitled to recover general compensatory damages "inherent in the nature of the wrong," even though the plaintiff has failed to establish individual injury or pecuniary loss. (Pet for Writ A1)

SUMMARY OF ARGUMENT.

Certiorari in this instance was granted upon the issue that the holding of the Seventh Circuit Court of Appeals was substantially in conflict with the holdings of the other circuits with regard to the proper application of damages in a civil rights case. This may be somewhat of an understatement for there appears to be no consistency whatsoever throughout the circuits as to any proper rule to apply in an action for violation of civil rights. (see cases cited in Petition for Writ and Response)

The circumstances which have evolved in the present consolidated cases is a situation involving a retroactive finding of a violation based upon a requirement of foreseeability. School officials determined that the individual plaintiffs, both Chicago public school students, violated school rules, one boy for smoking on school premises, and the other boy for wearing a street gang symbol to school. The District Court found that both boys were on actual notice of narrow regulations prohibiting this conduct; further, both boys acknowledged participating in the prohibited activity. However, the court nonetheless found that these suspensions were without adequate due process hearings, and that the defendants could be liable for damages because, although they acted without malice and were undoubtedly endeavoring to protect the integrity of the school system, they should have realized that by failing to provide an adequate due process hearing prior to the suspension, they would be violating the constitutional rights of the students. It was clearly apparent from the evidence that neither boy had suffered any pecuniary loss or any individualized injury, and therefore both special and general compensatory damages were denied. The plaintiffs appealed on the failure to award general compensatory damages. The Seventh Circuit Court of Appeals reversed the trial court, charging as error the trial court's failure to award

general compensatory damages which were inherent in the nature of the wrong and must be awarded even absent a showing of pecuniary loss or individualized injury, which otherwise is the standard for a compensatory award.

Petitioner's believe that, commendable though the motive may be, the Seventh Circuit Court of Appeals has extended itself beyond reasonable concepts of the law of damages in attempting to award an aggrieved plaintiff some money for whatever "troubles" he may have encountered.

The invasion of a person's civil rights is a civil wrong, and as such it is a tort. Courts have traditionally observed that the ordinary rules of tort law shall apply to the litigation of constitutional violations, and in fact the violation of civil rights is regularly referred to as a "constitutional tort." Under the circumstances, the traditional law of damages applicable to a tort must apply to a violation of a constitutional tort. The law of damages has always been compensation-oriented. To the extent that the plaintiff may have suffered pecuniary loss or individualized injury, he is entitled to compensation and petitioners herein would not dispute this. The plaintiff who has been wronged, whether by trespass or constitutional tort, but who has suffered no loss or injury is entitled to no more than a recognition of the invasion of his rights by an award of nominal damages. If there is an intent to punish the defendants by affecting some form of penal retribution, then the law of punitive damages is available. Furthermore, Congress has recently enacted an amendment to 42 U. S. C. 1988 to allow an award of attorneys' fees to a prevailing party in an action brought for civil rights violations pursuant to, *inter alia*, 42 U. S. C. 1983, and this more than sufficiently should provide a deterrent which some authorities believe is necessary to the proper enforcement of civil rights statutes.

ARGUMENT.

I.

CONSTITUTIONAL VIOLATIONS ARE CIVIL WRONGS SOUNDING IN TORT.

At tort is a civil wrong, a transgress by the defendant into the rights of the plaintiff, arising out of protected common law or statutory rights.¹ When a defendant carelessly and negligently, perhaps even maliciously, proximately causes an injury to the plaintiff, that defendant may be liable for the actual damages caused by that injury—none, or nominal, if sufficiency of proofs of damages are wanting; compensatory for the special and general loss; finally, for the wantonness or maliciousness of the act, punitive damages to set the defendant up as an example and to deter him and others from committing further similar acts. This is as apt for trespass or a battery, long recognized as torts at common law. Thus the law of torts concerns itself with the allocation and adjustment of losses arising out of human activities and affords compensation for injuries sustained by one person as a result of the conduct of another.²

Civil rights actions find their origin in the Civil Rights Act of 1871 which is now codified at 42 U. S. C. 1983. It would appear that the original purpose behind the passage of this civil rights act was to enforce the 14th amendment, by providing some form of civil remedy to redress acts of racial discrimination³. At its conception the act was presumed to be designed to enjoin a violation rather than provide compensation and as such was not widely used as a vehicle to collect money damages. Ultimately, by this Court's decision in *Monroe v. Pape, supra.*, the scope

1. Prosser, William L., *Handbook of the Law of Torts*, 3rd ed., West Publishing Co., 1964, at p. 2.

2. Prosser, *supra.*, note 1, p. 6.

3. *Monroe v. Pape*, 365 U. S. 167, 173-183 (1961).

of this Civil Rights Act was recognized to include varying causes of action for damages for violation of civil rights, other than dealing with racial discrimination.

Recognizing that the protection afforded a litigant was a civil wrong, but founded upon constitutional rights, this Court in *Monroe v. Pape, supra.*, at 187, determined that such actions sounded in tort and particularly observed:

§ 1979 should be read against the background of tort liability that makes a man responsible for the natural consequences of his actions.

Legal writers have labelled these actions for damages under the applicable statutes as "constitutional torts", and they are consistently referred to as such.⁴

Unfortunately, but primarily because the issue was never brought before it, this Court never attempted to determine the form of damages which should be awarded to a prevailing plaintiff. Under the circumstances, a wide variety of law has developed throughout the circuits. In many instances, courts, and particularly the Seventh Circuit Court of Appeals in the present case, have ignored traditional rules of damages in order to establish something more than a nominal award when the plaintiff's rights have been violated, however technical the determination may have been. The justification for these compensatory awards is that once the defendant invaded the rights of the plaintiff, there is some sort of irrebuttable presumption of compensatory damages. This can be nothing more than a fiction, for there is no area of the tort law of damages which permits an award of compensation absent pecuniary loss or individualized injury.

If, as this Court and the lower courts have consistently held, a violation of civil rights is a civil wrong which sounds in tort, then the rule of tort damages must necessarily apply. To hold otherwise is not compensation, it is retribution, an area totally alien to Anglo-American civil law.

4. Shapo, Marshall S., *Constitutional Tort: Monroe v. Pape and the Frontier Beyond*, 60 Nw. U. Law. Rev. 277 (1965).

II.

**THE TORT LAW OF DAMAGES APPLY TO
ALL CIVIL WRONGS.**

Substantive damages have always been based upon the necessity of compensating the injured party for his actual loss. As Blackstone observed in his *Commentaries*⁵:

Now, since all wrong ~~may~~ be considered as merely a privation of right, the plain natural remedy for every species of wrong is being put in possession of that right, whereof the party injured is deprived. This may either be effected by a specific delivery or restoration of the subject matter in dispute to the legal owner; . . . or, where that is not a possibility, by making the sufferer a pecuniary satisfaction; . . .

Thus, when it would not be possible to deliver or restore the subject matter of the wrong, the injured party should receive some monetary award for the actual damage which he suffered through the wrong done him. In terms of American law, and perhaps somewhat more succinctly, Sedgwick, in his volumes on damages,⁶ states:

The relief afforded by a tribunal may be either preventative or remedial. If remedial, it may again be either specific or it may consist in the mere award of pecuniary remuneration. The common law, as it exists in England and as it was introduced into the United States, is generally remedial in character, and, its remedies are of a pecuniary description.

These authorities cited stand for the principle of compensation, but the specific elements remain to be considered.

5. *Blackstone's Commentaries*, Sir George Tucker (1803) vol. IV, ch. 8, p. 116 (Rothman Reprints, So. Hackensack, New Jersey, and August M. Kelley, publishers, New York, New York, [1969]).

6. Sedgwick, Arthur G. and Beale, Joseph H., *A Treatise on the Measure of Damages*, 9th ed. (Baker, Voorhis & Co. [1912]) (hereafter, cited as Sedgwick), vol. I, p. 2.

Anglo-Saxon monarchs rigidly controlled and standardized early administration of damages, according to Sedgwick, and as early as the 6th century, A.D., the monarch carefully defined such compensations as, "If an ear be cut off let compensation be made by payment of twelve shillings." With the ascendancy of the Normal rule, such minutiae lessened, the measure of damages being more entrusted, suggests Sedgwick, to a slowly improving jurisprudence and a recognition that arbitrary rules used to fix values "are always a misfortune."⁷

Ultimately then, Anglo-American law of damages centered upon the principle that for the invasion of a right, the remedy was compensation. As Sedgwick explained:⁸

In all cases, then, of civil injury and breach of contract the declared object of awarding damages is to give compensation for pecuniary loss; that is, to put the plaintiff in the same position, so far as money can do it, as he would have been if the contract had been performed or the tort not committed . . . So, in actions of tort, the damages awarded should be an amount sufficient to indemnify the plaintiff for the loss which he has suffered at the hands of the defendant. In short, the purpose of awarding damages is the same whatever the form of action. . . .

The nature of such award of damages is fundamentally controlled by the refusal to redress an injury without legal wrong and its correlative proposition. "[T]he infringement of a legal right, when unattended by any positive injury, furnishes no ground for other than nominal relief."⁹

In Sedgwick's analysis the elements of compensation are:

First. Of the actual pecuniary loss directly sustained; . . .

Second. Of the indirect pecuniary loss sustained in consequence of the primary loss; . . .

Third. Of the physical and mental suffering produced by the act or omission in question; pain; vexation; anxiety.

7. Sedgwick, vol. I, pp. 7-10.

8. Sedgwick, vol. I, pp. 25-26.

9. Sedgwick, vol. I, p. 29.

Fourth. The value of the time consumed in establishing the contested right by process of law, if suit become necessary.

Fifth. The actual expenses incurred to obtain same end—costs and counsel's fees.

Sixth. The sense of wrong or insult, in the sufferer's breast, resulting from an act dictated by a spirit of wilful injustice or by a deliberate intention to vex, degrade or insult. . . .¹⁰

These injuries may be readily categorized. The Fourth and Fifth elements, above, are generally not allowable except under unusual circumstances, or by statute (see *Alyeska Pipeline v. Wilderness Soc.*, 421 U. S. 240 [1975]). The First is clearly the actual pecuniary loss sustained by the wrong. The Second, Third and Sixth items are the intangible injury which flows, although not necessarily inevitably, from the wrong done. These then are characterized in law, respectively, as special compensatory damages and general compensatory damages.¹¹

The goal of courts has always been to recompense the plaintiff for the tortious injury suffered:

The fundamental principle of the law of damages being compensation for the injury sustained, the plaintiff in a civil action for damages cannot, except in the cases in which punitive damages may be recovered, hold a defendant liable in damages for more than the actual loss which he has inflicted by his wrong. In other words, one injured by the breach of a contract or the commission of a tort is entitled to a just and adequate compensation for such injury, but no more. His recovery is, in the absence of circumstances giving rise to an allowance of punitive damages, limited to a fair compensation and indemnity for the injury which he suffered. The law will not put him in a better position than he would be had the wrong not been done or the contract not been broken.¹²

It has long been recognized in the law of damages that where no actual damages have been suffered, but there has been an

10. Sedgwick, vol. I, pp. 42-43.

11. 22 Am. Jur. 2d, Damages § 15.

12. 22 Am. Jur. 2d, Damages § 13.

invasion of a paramount right, the trier of the fact *may* make a nominal award. "It is now well established that nominal damages may be recovered for the bare infringement of a right, or for a breach of contract, unaccompanied by any actual damage."¹³ In Sedgwick's opinion, the rule of giving nominal damages exists to "settle the question of title or determine rights of the greatest importance."¹⁴

Finally, there is the concept of exemplary damages (also called punitive or vindictive). As explained by Sedgwick:

In actions of tort, when gross fraud, wantonness, malice, or oppression appears, the jury are not bound to adhere to the strict line of compensation, but may, by a severer verdict, at once impose a punishment on the defendant, and hold him up as an example to the community.¹⁵

Legal writers have challenged these traditional concepts of damages as being unworkable in administering justice to a plaintiff who has suffered a constitutional tort. In recognition that the plaintiff may well have suffered no actual loss, but yet somehow seems equitably entitled to some monetary award, principles of compensation have been ignored as passe in constitutional tort cases. See, for example, Note, Civil Actions for Damages under the Federal Civil Rights Statutes, 44 Texas L. Rev. 1015, 1027 (1967) where the author observes:

It seems clear, however, that the purpose of an award of damages in these cases [violation of civil rights] is punitive rather than compensatory. Although the plaintiff has lost something that can never be returned—the right to vote in one election—any pecuniary recovery given him will be nothing more than a windfall.

This author's solution is to create a new category of compensatory damages which is punitive in nature, but does not require an element of malice. In this manner, he believes that a putative plaintiff will have an incentive to sue, which "incentive is important since only by encouraging frequent suits can the civil

13. Sedgwick, vol. I, p. 167.

14. Sedgwick, vol. I, p. 169.

15. Sedgwick, vol. I, p. 687.

rights statutes fully accomplish their deterrent purpose". (*Supra* at p. 1033) This concept of penalizing the defendant has been introduced into constitutional torts by the Seventh Circuit in its opinion, in this case, directing that general compensatory damages for the injury which is "inherent" in nature of the wrong shall be awarded.

Commendable though it may be to provide some form of monetary award for a plaintiff who has established a tort violation of his constitutional rights but no loss or injury, this concept ignores reality and centuries of tested and proven law. To award a prevailing plaintiff, who has suffered no actual loss, anything beyond a nominal amount of money creates a windfall, without justification in the law. Anglo-American law has always been compensation-oriented and it should remain so. The invasion of a plaintiff's rights, where no actual loss is suffered should be no more than nominal damages. This is the only damage inherent in the nature of the wrong. Most surely, the plaintiff who has suffered some individualized injury should be compensated even if only in the nature of general compensatory damages. Here, too, the existing laws of damages are more than adequate. See, for example, *Seaton v. Sky Realty*, 491 F. 2d 634 (7th Cir., 1974), where Judge Fairchild surveyed and reported on the types of cases justifying an award for general compensatory damages, considering such as subjective pain and suffering, humiliation, embarrassment, discomfort, mental anguish, or mental distress. These are the types of intangible injury which Sedgwick's analysis indicates are elements of compensable injury. Naturally, there can be no argument that a plaintiff who prevails in a civil rights action should not receive his special pecuniary loss.

Finally, the law of damages is surely adequate to handle the concept of a penal award. This is exactly the purpose for which the law developed punitive damages. When the defendant's acts may be characterized as gross fraud, wanton, malicious or oppressive, and it is necessary to hold him up to the community

as an example to deter him and others from like conduct, then a punitive award has always been available to serve his purpose.

The instrumentality, if any be needed, to inflict some form of penalty upon a defendant who had committed a constitutional tort, while yet avoiding the problem of creating a windfall to the plaintiff now exists in law. By Public Law 94-559, § 2, October 19, 1976, 90 Stat. 2641, Congress amended 42 U. S. C. 1988 to include the following:

In any action or proceeding to enforce a provision of sections 1981, 1982, 1983, 1985, and 1986 of this title, title IX of Public Law 92-318, or in any civil action or proceeding, by or on behalf of the United States of America, to enforce or charging a violation of, a provision of the U.S. Internal Revenue Code, or title VI of the Civil Rights Act of 1964, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the cost.

If one of the purposes of an award is to provide plaintiff the incentive to bring a suit by which the civil rights statutes can fully accomplish their deterrent purpose,¹⁶ then the potential for an award of attorney's fees is that incentive. As this court observed in another but similar context:¹⁷

If successful plaintiffs were routinely forced to bear their own attorneys' fees, few aggrieved parties would be in a position to advance the public interest by invoking the injunctive powers of the Federal Courts. Congress therefore enacted the provision for counsel fees—not simply to penalize litigants who deliberately advanced arguments they know to be untenable but, more broadly, to encourage individuals injured by racial discrimination to seek judicial relief under Title II.

The law of damages as it is presently constituted is fully adequate to administer the problem of an award of damages for

16. Note, Civil Actions for Damages under the Federal Civil Rights Statutes, 44 Texas L. Rev. 1015 (1967).

17. *Newman v. Piggie Park Enterprises, Inc.*, 390 U. S. 400, 402, 19 L. Ed. 2d 1263, 1265-66 (1969).

the violation of a constitutional tort. Special or general compensation should be awarded only where there is a pecuniary loss or some individualized injury; nominal damages are available to recognize the invasion of the right; outrageous conduct runs the risk of punitive damages. More importantly, by statute, any necessary penalty or deterrent factor is now present with the availability of an award of attorney fees to the prevailing party.

Were this Court to hold otherwise, and allow damages here, the effect would be to penalize sincere civil servants and deter qualified persons from accepting these positions. It is widely recognized that school board members devote countless hours to the task of educating the young, all with little or no monetary compensation. Their reward is in the satisfaction of the accomplishment, at least equal to those who dedicate their careers to teaching. It is decisiveness and not meditation which must prevail in the classroom, if any system of orderly education is to be maintained. Sympathy for a child who has been momentarily wronged by an innocent error of judgment must not be transposed into an award of damages when he has suffered no actual injury. The administration of public schools needs trained and dedicated persons, and they will not respond to the calling if they must face the constant threat of compensating a child who has received no actual injury through some presumed violation of his civil rights.

CONCLUSION.

For the reasons set forth above, petitioners Carey, et al. respectfully request this Court to reverse the decision of the Seventh Circuit Court of Appeals and affirm the finding of the District Court.

Respectfully submitted,

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